IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 185 OF 2005

Kashyap Vimal Gadodia. ... Plaintiff.

V/s.

M/s. Hanuman Das Matadin & Ors. ... Defendants.

Mr. Narendra Jain i/b. S.K. Jain for the Plaintiffs.
None for the Defendants.

CORAM : DR. D.Y. CHANDRACHUD, J.

18TH JUNE, 2007.

P.C. :-

1. The Suit under the provisions of Order 37 of the Code of Civil Procedure, 1908 is for the recovery of monies lent and advanced.

2. On 7th July 1999, an amount of Rs.2.50 lakhs was advanced by a cheque to the Defendants and in consideration thereof the Defendants executed a "Khata-Pete" receipt in favour of the Plaintiff and acknowledged the loan, which was to carry interest as stipulated thereunder. The Defendants are stated to have paid interest at the rate of 1.10% per month upto

6th October 1999. A total interest payment of Rs.89,233/- was made by the Defendants to the Plaintiff, the last payment being made on 1st November 2001. An Advocate's notice was addressed on 4th October 2004 to which there was no reply. The Suit was instituted on 28th October 2004.

3. The claim of the Plaintiff falls within the purview of Order 37 of the C.P.C. since it is based on a written contract. The Defendant has failed to enter appearance despite service of the writ of summons. An affidavit of service is filed. The Plaintiff would be entitled to a decree under Order 37 of the C.P.C. The suit shall accordingly stand decreed in the principal sum of Rs.2.50 lakhs. The Plaintiff would be entitled to interest thereon from 1st November 2001 until the date of the institution of the suit at the rate of 9% per annum and at the same rate from the date of the institution until payment or realization. The Plaintiff is entitled to the costs of the suit.

4. Refund of Court fees if any, as per rules.